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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|------------------------------------|-------------|----------------------|---------------------|------------------|
| 10/725,235 | 12/01/2003 | Andrew J. Curello | BIC-023 | 1937 |
| 29626 | 7590 | 03/15/2005 | EXAMINER | |
| THE H.T. THAN LAW GROUP | | | CINTINS, IVARS C | |
| 1010 WISCONSIN AVENUE NW SUITE 580 | | | ART UNIT | |
| WASHINGTON, DC 20007 | | | PAPER NUMBER | |

1724

DATE MAILED: 03/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/725,235

Applicant(s)

CURELLO ET AL.

Examiner

Ivars C. Cintins

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 3/11/2004.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

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The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 4, 7, 14 and 20-23 are rejected under 35 U.S.C. 102(b) as being anticipated by Patil et al. (U.S. Patent No. 4,038,365). The reference discloses a pressure filter (col. 4, lines 6-7) comprising a perfluorinated sulfonic acid polymer as a filtration medium (col. 4, lines 16-17), which pressure filter will inherently have an inlet, an outlet and a housing encasing the filtration medium. Applicant should note that the intended use of a device (i.e. with a fuel cell, in a fuel supply, in a mixing chamber, in a byproduct chamber, etc.) is not a structural limitation, and hence cannot be relied upon to patentably distinguish apparatus claims. It is well settled that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987).

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 8-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Patil et al.

The reference discloses the claimed invention with the exception of the physical form of the filtration medium. However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to employ the perfluorinated sulfonic acid polymer of the reference

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in any of the physical forms recited in claims 8-13, since the reference clearly teaches that the filter disclosed therein can have any desired configuration (see col. 4, lines 6-9).


Claims 1-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Derflinger et al. (U.S. Patent No. 6,723,460) in view of Patil et al. Derflinger et al. discloses (see Fig. 1) a fuel cell system employing an ion exchanger unit (3) and a filter (4) to purify fuel before it reaches a fuel cell (see col. 2, lines 14-16 and 29-31). Accordingly, this primary reference discloses the claimed invention with the exception of the type of filter employed. Patil et al. discloses a filter of the type recited; and it would have been obvious to one of ordinary skill in the art at the time the invention was made to substitute the filter of Patil et al. for the ion exchanger unit and/or filter of the Derflinger et al. system, since this secondary reference filter is capable of removing ions and/or particulate contaminants from a fluid in substantially the same manner as the ion exchanger unit and/or filter of the primary reference, to produce substantially the same results. Also, it would have been obvious to one of ordinary skill in the art at the time the invention was made to employ the perfluorinated sulfonic acid polymer of the thus modified primary reference in any of the physical forms recited in claims 8-13, 16 and 18, since the secondary reference clearly teaches that its filter can have any desired configuration.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to I. Cintins whose telephone number is (571) 272-1155. The examiner can normally be reached on Monday through Friday from 8:30 AM to 5:00 PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Duane Smith, can be reached at (571) 272-1166.

The centralized facsimile number for the USPTO is (703) 872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Ivars C. Cintins
Primary Examiner
Art Unit 1724

I. Cintins
March 11, 2005